

AMENDED IN ASSEMBLY MARCH 11, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 131

Introduced by Assembly Member Evans

January 20, 2009

An act to amend Section 68085.1 of the Government Code, and to amend Sections 317, 903.1, and 903.45 of the Welfare and Institutions Code, relating to juvenile court costs.

LEGISLATIVE COUNSEL'S DIGEST

AB 131, as amended, Evans. Juvenile proceedings: costs.

Existing law provides for the appointment of counsel to represent a parent or guardian of a child, or the child, in juvenile court proceedings if the parent or guardian is unable to afford counsel. Existing law also provides that the father, mother, spouse, or other person liable for the support of the minor shall be liable to the county for those costs, except as specified, and, more generally, for specified other costs, including the reasonable costs of support of the minor while the minor is placed, detained in, or committed to, any institution pursuant to an order of the juvenile court or pursuant to the authority of a peace officer to take a minor into temporary custody.

Existing law authorizes the board of supervisors to designate a county financial evaluation officer to make financial evaluations of liability for reimbursement of the costs described above, as specified, and authorizes that officer to petition the court for an order requiring the person who is determined to be financially responsible to pay the costs.

This bill would expand the provisions described above to specifically provide that the persons who are liable for the support of the minor shall also be liable for the cost to the county or the court for the cost of

legal services rendered to the minor, *except under specified circumstances*. The bill would additionally authorize the court to designate a financial evaluation officer who would have the same authority described above.

The bill would require the Judicial Council to establish a cost recovery program to collect reimbursements for counsel appointed by the court to represent parents or minors, as specified. The bill would also make related and technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 68085.1 of the Government Code is
2 amended to read:
3 68085.1. (a) This section applies to all fees and fines that are
4 collected on or after January 1, 2006, under all of the following:
5 (1) Sections 177.5, 209, 403.060, 491.150, 631.3, 683.150,
6 704.750, 708.160, 724.100, 1134, 1161.2, 1218, and 1993.2 of,
7 subdivision (g) of Section 411.20 and subdivisions (c) and (g) of
8 Section 411.21 of, and Chapter 5.5 (commencing with Section
9 116.110) of Title 1 of Part 1 of, the Code of Civil Procedure.
10 (2) Section 3112 of the Family Code.
11 (3) Section 31622 of the Food and Agricultural Code.
12 (4) Subdivision (d) of Section 6103.5, Sections 68086 and
13 68086.1, Article 6 (commencing with Section 68630) of Chapter
14 2, Sections 68926.1 and 69953.5, and Chapter 5.8 (commencing
15 with Section 70600).
16 (5) Section 103470 of the Health and Safety Code.
17 (6) Subdivisions (b) and (c) of Section 166 and Section 1214.1
18 of the Penal Code.
19 (7) Sections 1835, 1851.5, 7660, and 13201 of the Probate Code.
20 (8) Sections 14607.6 and 16373 of the Vehicle Code.
21 (9) Section 71386 of this code, Sections 304, 7851.5, and 9002
22 of the Family Code, Section 1513.1 of the Probate Code, and
23 Section 903.1 of the Welfare and Institutions Code, if the
24 reimbursement is for expenses incurred by the court.
25 (10) Section 3153 of the Family Code, if the amount is paid to
26 the court for the cost of counsel appointed by the court to represent
27 a child.

(b) On and after January 1, 2006, each superior court shall deposit all fees and fines listed in subdivision (a), as soon as practicable after collection and on a regular basis, into a bank account established for this purpose by the Administrative Office of the Courts. Upon direction of the Administrative Office of the Courts, the county shall deposit civil assessments under Section 1214.1 of the Penal Code and any other money it collects under the sections listed in subdivision (a) as soon as practicable after collection and on a regular basis into the bank account established for this purpose and specified by the Administrative Office of the Courts. The deposits shall be made as required by rules adopted by, and financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206. Within 15 days after the end of the month in which the fees and fines are collected, each court, and each county that collects any fines or fees under subdivision (a), shall provide the Administrative Office of the Courts with a report of the fees by ~~categories~~ *category* as specified by the Administrative Office of the Courts. The Administrative Office of the Courts and any court may agree upon a time period greater than 15 days, but in no case more than 30 days after the end of the month in which the fees and fines are collected. The fees and fines listed in subdivision (a) shall be distributed as provided in this section.

(c) (1) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the Administrative Office of the Courts shall make the following distributions:

(A) To the small claims advisory services, as described in subdivision (f) of Section 116.230 of the Code of Civil Procedure.

(B) To dispute resolution programs, as described in subdivision (b) of Section 68085.3 and subdivision (b) of Section 68085.4.

(C) To the county law library funds, as described in Sections 116.230 and 116.760 of the Code of Civil Procedure, subdivision (b) of Section 68085.3, subdivision (b) of Section 68085.4, and Section 70621 of this code, and Section 14607.6 of the Vehicle Code.

(D) To the courthouse construction funds in the Counties of Riverside, San Bernardino, and San Francisco, as described in Sections 70622, 70624, and 70625.

1 (2) If any distribution under this subdivision is delinquent, the
2 Administrative Office of the Courts shall add a penalty to the
3 distribution as specified in subdivision (i).

4 (d) Within 45 calendar days after the end of the month in which
5 the fees and fines listed in subdivision (a) are collected, the
6 amounts remaining after the distributions in subdivision (c) shall
7 be transmitted to the State Treasury for deposit in the Trial Court
8 Trust Fund and other funds as required by law. This remittance
9 shall be accompanied by a remittance advice identifying the
10 collection month and the appropriate account in the Trial Court
11 Trust Fund or other fund to which it is to be deposited. Upon the
12 receipt of any delinquent payment required under this subdivision,
13 the Controller shall calculate a penalty as provided under
14 subdivision (i).

15 (e) From the money transmitted to the State Treasury under
16 subdivision (d), the Controller shall make deposits as follows:

17 (1) Into the State Court Facilities Construction Fund, the Judges'
18 Retirement Fund, and the Equal Access Fund, as described in
19 subdivision (c) of Section 68085.3 and subdivision (c) of Section
20 68085.4.

21 (2) Into the Health Statistics Special Fund, as described in
22 subdivision (b) of Section 70670 of this code and Section 103730
23 of the Health and Safety Code.

24 (3) Into the Family Law Trust Fund, as described in Section
25 70674.

26 (4) Into the Immediate and Critical Needs Account of the State
27 Court Facilities Construction Fund, established in Section 70371.5,
28 as described in Sections 68085.3, 68085.4, and 70657.5, and
29 subdivision (e) of Section 70617.

30 (5) The remainder of the money shall be deposited into the Trial
31 Court Trust Fund.

32 (f) The amounts collected by each superior court under Section
33 116.232, subdivision (g) of Section 411.20, and subdivision (g) of
34 Section 411.21 of the Code of Civil Procedure, Sections 304, 3112,
35 3153, 7851.5, and 9002 of the Family Code, subdivision (d) of
36 Section 6103.5, Article 6 (commencing with Section 68630) of
37 Chapter 2, and Sections 68926.1, 69953.5, 70627, 70631, 70640,
38 70661, 70678, and 71386 of this code, and Sections 1513.1, 1835,
39 and 1851.5 of the Probate Code shall be added to the monthly

1 apportionment for that court under subdivision (a) of Section
2 68085.

3 (g) If any of the fees provided in subdivision (a) are partially
4 waived by court order or otherwise reduced, and the fee is to be
5 divided between the Trial Court Trust Fund and any other fund or
6 account, the amount of the reduction shall be deducted from the
7 amount to be distributed to each fund in the same proportion as
8 the amount of each distribution bears to the total amount of the
9 fee. If the fee is paid by installment payments, the amount
10 distributed to each fund or account from each installment shall
11 bear the same proportion to the installment payment as the full
12 distribution to that fund or account does to the full fee. If a court
13 collects a fee that was incurred before January 1, 2006, under a
14 provision that was the predecessor to one of the paragraphs
15 contained in subdivision (a), the fee may be deposited as if it were
16 collected under the paragraph of subdivision (a) that corresponds
17 to the predecessor of that paragraph and distributed in prorated
18 amounts to each fund or account to which the fee in subdivision
19 (a) must be distributed.

20 (h) Except as provided in Sections 470.5 and 6322.1 of the
21 Business and Professions Code, and Sections 70622, 70624, and
22 70625 of this code, no agency may take action to change the
23 amounts allocated to any of the funds described in subdivision (c),
24 (d), or (e).

25 (i) The amount of the penalty on any delinquent payment under
26 subdivision (c) or (d) shall be calculated by multiplying the amount
27 of the delinquent payment at a daily rate equivalent to 1 ½ percent
28 per month for the number of days the payment is delinquent. The
29 penalty shall be paid from the Trial Court Trust Fund. Penalties
30 on delinquent payments under subdivision (d) shall be calculated
31 only on the amounts to be distributed to the Trial Court Trust Fund
32 and the State Court Facilities Construction Fund, and each penalty
33 shall be distributed proportionately to the funds to which the
34 delinquent payment was to be distributed.

35 (j) If a delinquent payment under subdivision (c) or (d) results
36 from a delinquency by a superior court under subdivision (b), the
37 court shall reimburse the Trial Court Trust Fund for the amount
38 of the penalty. Notwithstanding Section 77009, any penalty on a
39 delinquent payment that a court is required to reimburse pursuant
40 to this section shall be paid from the court operations fund for that

1 court. The penalty shall be paid by the court to the Trial Court
2 Trust Fund no later than 45 days after the end of the month in
3 which the penalty was calculated. If the penalty is not paid within
4 the specified time, the Administrative Office of the Courts may
5 reduce the amount of a subsequent monthly allocation to the court
6 by the amount of the penalty on the delinquent payment.

7 (k) If a delinquent payment under subdivision (c) or (d) results
8 from a delinquency by a county in transmitting fees and fines listed
9 in subdivision (a) to the bank account established for this purpose,
10 as described in subdivision (b), the county shall reimburse the Trial
11 Court Trust Fund for the amount of the penalty. The penalty shall
12 be paid by the county to the Trial Court Trust Fund no later than
13 45 days after the end of the month in which the penalty was
14 calculated.

15 SEC. 2. Section 317 of the Welfare and Institutions Code is
16 amended to read:

17 317. (a) (1) When it appears to the court that a parent or
18 guardian of the child desires counsel but is presently financially
19 unable to afford and cannot for that reason employ counsel, the
20 court may appoint counsel as provided in this section.

21 (2) When it appears to the court that a parent or Indian custodian
22 in an Indian child custody proceeding desires counsel but is
23 presently unable to afford and cannot for that reason employ
24 counsel, the provisions of subsection (b) of Section 1912 of the
25 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Section
26 23.13 of Title 25 of the Code of Federal Regulations are applicable.

27 (b) When it appears to the court that a parent or guardian of the
28 child is presently financially unable to afford and cannot for that
29 reason employ counsel, and the child has been placed in
30 out-of-home care, or the petitioning agency is recommending that
31 the child be placed in out-of-home care, the court shall appoint
32 counsel for the parent or guardian, unless the court finds that the
33 parent or guardian has made a knowing and intelligent waiver of
34 counsel as provided in this section.

35 (c) If a child is not represented by counsel, the court shall
36 appoint counsel for the child unless the court finds that the child
37 would not benefit from the appointment of counsel. The court shall
38 state on the record its reasons for that finding. A primary
39 responsibility of any counsel appointed to represent a child
40 pursuant to this section shall be to advocate for the protection,

1 safety, and physical and emotional well-being of the child. Counsel
2 for the child may be a district attorney, public defender, or other
3 member of the bar, provided that the counsel does not represent
4 another party or county agency whose interests conflict with the
5 child's interests. The fact that the district attorney represents the
6 child in a proceeding pursuant to Section 300 as well as conducts
7 a criminal investigation or files a criminal complaint or information
8 arising from the same or reasonably related set of facts as the
9 proceeding pursuant to Section 300 is not in and of itself a conflict
10 of interest. The court may fix the compensation for the services
11 of appointed counsel. The appointed counsel shall have a caseload
12 and training that ensures adequate representation of the child. The
13 Judicial Council shall promulgate rules of court that establish
14 caseload standards, training requirements, and guidelines for
15 appointed counsel for children and shall adopt rules as required
16 by Section 326.5 no later than July 1, 2001.

17 (d) The counsel appointed by the court shall represent the parent,
18 guardian, or child at the detention hearing and at all subsequent
19 proceedings before the juvenile court. Counsel shall continue to
20 represent the parent, guardian, or child unless relieved by the court
21 upon the substitution of other counsel or for cause. The
22 representation shall include representing the parent, guardian, or
23 the child in termination proceedings and in those proceedings
24 relating to the institution or setting aside of a legal guardianship.

25 (e) The counsel for the child shall be charged in general with
26 the representation of the child's interests. To that end, the counsel
27 shall make or cause to have made any further investigations that
28 he or she deems in good faith to be reasonably necessary to
29 ascertain the facts, including the interviewing of witnesses, and
30 he or she shall examine and cross-examine witnesses in both the
31 adjudicatory and dispositional hearings. He or she may also
32 introduce and examine his or her own witnesses, make
33 recommendations to the court concerning the child's welfare, and
34 participate further in the proceedings to the degree necessary to
35 adequately represent the child. In any case in which the child is
36 four years of age or older, counsel shall interview the child to
37 determine the child's wishes and to assess the child's well-being,
38 and shall advise the court of the child's wishes. Counsel for the
39 child shall not advocate for the return of the child if, to the best of
40 his or her knowledge, that return conflicts with the protection and

1 safety of the child. In addition, counsel shall investigate the
2 interests of the child beyond the scope of the juvenile proceeding
3 and report to the court other interests of the child that may need
4 to be protected by the institution of other administrative or judicial
5 proceedings. The attorney representing a child in a dependency
6 proceeding is not required to assume the responsibilities of a social
7 worker and is not expected to provide nonlegal services to the
8 child. The court shall take whatever appropriate action is necessary
9 to fully protect the interests of the child.

10 (f) Either the child or the counsel for the child, with the informed
11 consent of the child if the child is found by the court to be of
12 sufficient age and maturity to so consent, which shall be presumed,
13 subject to rebuttal by clear and convincing evidence, if the child
14 is over 12 years of age, may invoke the psychotherapist-client
15 privilege, physician-patient privilege, and clergyman-penitent
16 privilege; and if the child invokes the privilege, counsel may not
17 waive it, but if counsel invokes the privilege, the child may waive
18 it. Counsel shall be holder of these privileges if the child is found
19 by the court not to be of sufficient age and maturity to so consent.
20 For the sole purpose of fulfilling his or her obligation to provide
21 legal representation of the child, counsel for a child shall have
22 access to all records with regard to the child maintained by a health
23 care facility, as defined in Section 1545 of the Penal Code, health
24 care providers, as defined in Section 6146 of the Business and
25 Professions Code, a physician and surgeon or other health
26 practitioner, as defined in former Section 11165.8 of the Penal
27 Code, as that section read on January 1, 2000, or a child care
28 custodian, as defined in former Section 11165.7 of the Penal Code,
29 as that section read on January 1, 2000. Notwithstanding any other
30 law, counsel shall be given access to all records relevant to the
31 case which are maintained by state or local public agencies. All
32 information requested from a child protective agency regarding a
33 child who is in protective custody, or from a child's guardian ad
34 litem, shall be provided to the child's counsel within 30 days of
35 the request.

36 (g) In a county of the third class, if counsel is to be provided to
37 a child at county expense other than by counsel for the agency,
38 the court shall first utilize the services of the public defender prior
39 to appointing private counsel, to provide legal counsel. Nothing
40 in this subdivision shall be construed to require the appointment

1 of the public defender in any case in which the public defender
2 has a conflict of interest. In the interest of justice, a court may
3 depart from that portion of the procedure requiring appointment
4 of the public defender after making a finding of good cause and
5 stating the reasons therefor on the record.

6 (h) In a county of the third class, if counsel is to be appointed
7 for a parent or guardian at county expense, the court shall first
8 utilize the services of the alternate public defender, prior to
9 appointing private counsel, to provide legal counsel. Nothing in
10 this subdivision shall be construed to require the appointment of
11 the alternate public defender in any case in which the public
12 defender has a conflict of interest. In the interest of justice, a court
13 may depart from that portion of the procedure requiring
14 appointment of the alternate public defender after making a finding
15 of good cause and stating the reasons therefor on the record.

16 (i) The Judicial Council shall establish a cost recovery program
17 to collect reimbursements for counsel appointed by the court to
18 represent parents or minors as authorized by Section 903.1. All
19 funds recovered by this program shall be utilized to reduce
20 caseloads, for attorneys appointed by the court, to the caseload
21 standard approved by the Judicial Council. Priority shall be given
22 to those courts with the highest attorney caseloads that also
23 demonstrate the ability to immediately improve outcomes for
24 parents and children as a result of lower attorney caseloads.

25 SEC. 3. Section 903.1 of the Welfare and Institutions Code is
26 amended to read:

27 903.1. (a) The father, mother, spouse, or other person liable
28 for the support of a minor, the estate of that person, and the estate
29 of the minor, shall be liable for the cost to the county or the court,
30 whichever entity incurred the expenses, of legal services rendered
31 to the minor by an attorney pursuant to an order of the juvenile
32 court. The father, mother, spouse, or other person liable for the
33 support of a minor and the estate of that person shall also be liable
34 for any cost to the county or the court of legal services rendered
35 directly to the father, mother, or spouse, of the minor or any other
36 person liable for the support of the minor, in a dependency
37 proceeding by an attorney appointed pursuant to an order of the
38 juvenile court. The liability of those persons (in this article called
39 relatives) and estates shall be a joint and several liability.

(b) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of the minor, the estate of that person, or the estate of the minor, shall not be liable for the costs of any of the legal services provided to any person described in this section if a petition to declare the minor a dependent child of the court pursuant to Section 300 is dismissed at or before the jurisdictional hearing.

SEC. 4. Section 903.45 of the Welfare and Institutions Code is amended to read:

903.45. (a) The board of supervisors or the court may designate a financial evaluation officer pursuant to Section 27750 of the Government Code to make financial evaluations of liability for reimbursement pursuant to Sections 207.2, 903, 903.1, 903.2, 903.25, 903.3, and 903.5, and other reimbursable costs allowed by law, as set forth in this section.

(b) In any county where a board of supervisors or the court has designated a financial evaluation officer, the juvenile court shall, at the close of the disposition hearing, order any person liable for the cost of support, pursuant to Section 903, the cost of legal services as provided for in Section 903.1~~or~~, probation costs as provided for in Section 903.2, or any other reimbursable costs allowed under this code, to appear before the financial evaluation officer for a financial evaluation of his or her ability to pay those costs; and if the responsible person is not present at the disposition hearing, the court shall cite him or her to appear for such a financial evaluation. In the case of a parent, guardian, or other person assessed for the costs of transport, food, shelter, or care of a minor under Section 207.2 or 903.25, the juvenile court shall, upon request of the county probation department, order the appearance of the parent, guardian, or other person before the financial evaluation officer for a financial evaluation of his or her ability to pay the costs assessed.

If the financial evaluation officer determines that a person so responsible has the ability to pay all or part of the costs, the financial evaluation officer shall petition the court for an order requiring the person to pay that sum to the county or court. *If the parent or guardian is liable for costs for legal services pursuant to Section 903.1, the parent or guardian has been reunified with the child pursuant to a court order, and the court or financial officer determines that repayment of the costs would harm the*

1 *ability of the parent or guardian to support the child, then the*
2 *financial officer shall not petition the court for an order of*
3 *repayment, and the court shall not make that order. In addition,*
4 *if the parent or guardian is currently receiving reunification*
5 *services, and the court finds that repayment by the parent or*
6 *guardian will pose a barrier to reunification with the child because*
7 *it will limit the ability of the parent or guardian to comply with*
8 *the requirements of the reunification plan or compromise the*
9 *parent's or guardian's current or future ability to meet the*
10 *financial needs of the child, the court shall not order repayment*
11 *by the parent or guardian. In evaluating a person's ability to pay*
12 *under this section, the financial evaluation officer and the court*
13 *shall take into consideration the family's income, the necessary*
14 *obligations of the family, and the number of persons dependent*
15 *upon this income. Any person appearing for a financial evaluation*
16 *shall have the right to dispute the financial evaluation officer's*
17 *determination, in which case he or she shall be entitled to a hearing*
18 *before the juvenile court. The financial evaluation officer at the*
19 *time of the financial evaluation shall advise such a person of his*
20 *or her right to a hearing and of his or her rights pursuant to*
21 *subdivision (c).*

22 At the hearing, any person so responsible for costs shall be
23 entitled to have, but shall not be limited to, the opportunity to be
24 heard in person, to present witnesses and other documentary
25 evidence, to confront and cross-examine adverse witnesses, to
26 disclosure of the evidence against him or her, and to receive a
27 written statement of the findings of the court. The person shall
28 have the right to be represented by counsel, and, when the person
29 is unable to afford counsel, the right to appointed counsel. If the
30 court determines that the person has the ability to pay all or part
31 of the costs, including the costs of any counsel appointed to
32 represent the person at the hearing, the court shall set the amount
33 to be reimbursed and order him or her to pay that sum to the county
34 in a manner in which the court believes reasonable and compatible
35 with the person's financial ability.

36 If the person or persons, after having been ordered to appear
37 before the financial evaluation officer, have been given proper
38 notice and fail to appear as ordered, the financial evaluation officer
39 shall recommend to the court that he, she, or they be ordered to

1 pay the full amount of the costs. Proper notice to him, her, or them
2 shall contain all of the following:

3 (1) That he, she, or they have a right to a statement of the costs
4 as soon as it is available.

5 (2) His, her, or their procedural rights under Section 27755 of
6 the Government Code.

7 (3) The time limit within which his, her, or their appearance is
8 required.

9 (4) A warning that if he, she, or they fail to appear before the
10 financial evaluation officer, the officer will recommend that the
11 court order him, her, or them to pay the costs in full.

12 If the financial evaluation officer determines that the person or
13 persons have the ability to pay all or a portion of these costs, with
14 or without terms, and he, she, or they concur in this determination
15 and agree to the terms of payments, the financial evaluation officer,
16 upon his or her written evaluation and the person's or persons'
17 written agreement, shall petition the court for an order requiring
18 him, her, or them to pay that sum to the county or the court in a
19 manner which is reasonable and compatible with his, her, or their
20 financial ability. This order may be granted without further notice
21 to the person or persons, provided a copy of the order is served on
22 him, her, or them by mail.

23 However, if the financial evaluation officer cannot reach an
24 agreement with the person or persons with respect to either the
25 liability for the costs, the amount of the costs, his, her, or their
26 ability to pay the same, or the terms of payment, the matter shall
27 be deemed in dispute and referred by the financial evaluation
28 officer back to the court for a hearing.

29 (c) At any time prior to the satisfaction of a judgment entered
30 pursuant to this section, a person against whom the judgment was
31 entered may petition the rendering court to modify or vacate the
32 judgment on the basis of a change in circumstances relating to his
33 or her ability to pay the judgment.

34 (d) Execution may be issued on the order in the same manner
35 as on a judgment in a civil action, including any balance remaining
36 unpaid at the termination of the court's jurisdiction over the minor.